## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWAN

DAVENPORT DIVISION GLERK U.S. DISTARC COURT

THOMAS L. STALEY,	)	
Plaintiff,	)	Civil No. 3-99-CV-80169
vs.	).	
IOWA INTERSTATE RAILROAD, LTD., a corporation,	)	ORDER
Defendant.	) .	

This Court held a trial beginning on May 14, 2001. The jury returned a verdict on May 16 in favor of defendant. Plaintiff brought a motion for a new trial pursuant to Federal Rule of Civil Procedure 59(a) on July 2. This motion was resisted by defendant on July 10 and is now fully submitted.

In considering a motion for new trial, the Court must determine whether the verdict "was against the great weight of the evidence." Butler v. French, 83 F.3d 942, 944 (8th Cir. 1996). This determination necessarily involves making independent evaluations on the credibility of witnesses and the weight of the evidence. White v. Pence, 961 F.2d 776, 779 (8th Cir. 1992). However, this Court is not allowed to "usurp the role of the jury by granting a new trial simply because it believes other inferences and conclusions are more reasonable." Van Steenburgh v. Rival Co., 171 F.3d 1155, 1160 (8th Cir. 1999) (citing White, 961 F.2d at 780-81). Further, in considering whether omitted jury instructions are just cause for a new trial, the issue is whether the instructions as a whole viewed in light of the evidence and applicable law adequately submitted the issues in the case to the jury. See Barnum v. Wal-Mart Stores, Inc., 195 F.3d 1011, 1013 (8th Cir. 1999) (citation omitted). The decision whether to grant a new trial rests on

the sound discretion of the trial court. Butler, 83 F.3d at 944.

This case involved a claim for personal injury by plaintiff, Thomas Staley, under the Federal Employers' Liability Act (FELA) against his employer, Iowa Interstate Railroad ("IAIS"). The evidence at trial demonstrated that Staley was working as an electrician for IAIS when he injured his shoulder. Staley the injury occurred when he slipped on an accumulation of crater grease on the ground near a work area in the railroad yard in Iowa City, Iowa on October 2, 1996. Staley now argues that the jury erred in returning a verdict finding IAIS was not negligent under the FELA. Staley asserts the weight of the evidence presented at trial demanded a verdict in favor of Staley, and the jury was improperly instructed because two of the instructions that he requested were not given.

The jury's finding that IAIS was not negligent in, 1) failing to adopt and enforce a safe method for the removal of grease and other slipping hazzards from work areas, 2) failing to adopt and enforce a safe method for periodically inspecting work areas for slipping hazzards, 3) failing to properly lubricate its locomotive engines and allowing grease to spill from the engines to the ground, and/or 4) allowing an unsafe condition to exist by having crater grease on the ground, was not against the great weight of the evidence presented at trial. Staley's own testimony regarding the slipping incident was not fully credible. Further, while Staley asserted crater grease is extraordinarily slippery, there was credible testimony from other railroad employees that the crater grease Staley claimed to have slipped on would not have been slippery on the ground.

The Court also concludes the jury was properly instructed. The FELA departs from the common law in the area of causation. Proximate cause is not the standard, as the defendant's

negligence need only have been a cause of plaintiff's injury "in whole or in part." See Sinkler v. Missouri Pacific R. Co., 356 U.S. 326, 329 (1958). The jury was informed of this difference through instructions 2, 15a and 16. While the Court did not include the verbatim language that plaintiff requested in his proposed instruction number 12 – namely, that IAIS could be found negligent if its "act or omission played any part, no matter how small" in plaintiff's injury – the jury was properly instructed. Further, while plaintiff requested proposed instruction number 9 which detailed the duty of IAIS to provide plaintiff with a safe place to work, IAIS's duty was generally set forth in instruction number 16 that was given to the jury. The Court's instruction number 16 was based on section 7.01 of the Eighth Circuit's Model Civil Jury Instructions.

Because the jury's verdict was not inconsistent with the weight of the evidence and the jury was properly instructed, Staley's motion for a new trial is denied.

IT IS SO ORDERED.

Dated this 15 Tday of August, 2001.

UNITED STATES DISTRICT CO